

1 David & Suzanne Douglas
2 2300 E. Hartley Road
3 Ozark MO 65721

4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF MISSOURI
6

David & Suzanne Douglas

Plaintiff,

vs.

Sovereign Bank

Defendant

Case # 10-3378-CV-S-RED

**PETITION FOR NO ANSWER
DEFAULT**

Date: 10/19/2010

7
8 **PARTIES**

9 **PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT**

10 Plaintiff asks the court clerk to enter a default against defendant, as authorized by Federal
11 Rule of Civil Procedure 55.

12 **A. Introduction**

13 1. Plaintiff is: David & Suzanne Douglas , 2300 E. Hartley Road Ozark MO 65721, and
14 defendant is: Sovereign Bank ,

15 2. On 9/16/2010 plaintiff sued defendant for breach of fiduciary duty, fraud, fraud by
16 nondisclosure, and violations of various consumer protection laws.

17 3. On 9/16/2010, plaintiff filed with the court an ORIGINAL COMPLAINT. On
18 9/21/2010 defendant was served with a summons and a copy of plaintiff's complaint by and
19 through process server. A copy of the return of service is attached as Exhibit A. Defendant did
20 not file a responsive pleading or otherwise defend the suit.

21 4. Plaintiff is entitled to entry of default.

PETITION FOR NO ANSWER DEFAULT

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1 B. Argument

2 5. The court clerk may enter a default against a party who has not filed a responsive
3 pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see United States v. \$23,000 in*
4 *U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004); *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141
5 (5th Cir. 1996); *United States v. 51 Pieces of Real Prop. Roswell, N.M.*, 17 F.3d 1306, 1314
6 (10th Cir. 1994).

7 6. The clerk should enter a default against defendant because defendant did not file an
8 answer within 20 days after 9/21/2010, the date of service. Fed. R. Civ. P. 12(a)(1)(A)(i).

9 7. Plaintiff meets the procedural requirements for obtaining an entry of default from the
10 clerk as demonstrated by Dustin Vilardo's sworn affidavit, attached as Exhibit A. Said affidavit
11 establishes by sworn testimony of Plaintiff that Defendant failed to answer or otherwise defend
12 the instant action within the 20 day time period allowed by law.

13 8. Defendant is not a minor or an incompetent person. *See* Fed. R. Civ. P. 55(b)(1).

14 9. Defendant is not in military service. *See* 50 U.S.C. app. §521(b)(2). An affidavit of
15 defendant's military status is attached as Exhibit A.

16 10. Because defendant did not file a responsive pleading or otherwise defend the suit,
17 defendant is not entitled to notice of entry of default. *Haw. Carpenters' Trust Funds v. Stone*,
18 794 F.2d 508, 512 (9th Cir. 1986); *see* Fed. R. Civ. P. 55(a).

19 C. Conclusion

20 11. Plaintiff filed a suit against defendant in the court on the 16th day of September, 2010.
21 Defendant failed to timely answer or otherwise defend said action and, thereby, Plaintiff is
22 entitled to judgment against defendant is all things requested by Plaintiff in the suit. For these
23 reasons, plaintiff asks the clerk to enter a default in favor of plaintiff.

24 Respectfully Submitted,
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26
27


David Douglas


Suzanne Douglas

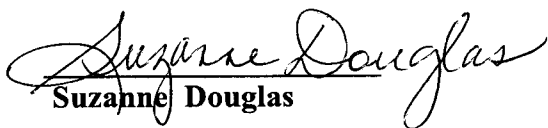
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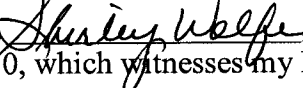
VERIFICATION

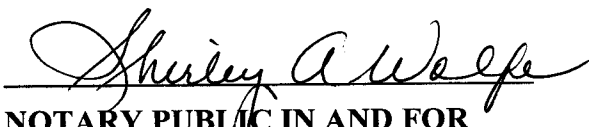
We, David & Suzanne Douglas , do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

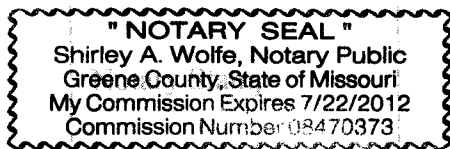
David & Suzanne Douglas
2300 E. Hartley Road
Ozark MO 65721


David Douglas


Suzanne Douglas

SWORN TO AND SUBSCRIBED BEFORE ME,  by David & Suzanne Douglas on the 19th day of October, 2010, which witnesses my hand and seal of office.


NOTARY PUBLIC IN AND FOR
THE STATE OF MISSOURI



CERTIFICATE OF SERVICE

I, David & Suzanne Douglas, do swear and affirm that I have served a signed copy of this Petition for No Answer Default, and Order for No Answer Default to any and all defendants by way of U.S.P.S. Certified mail # 7009 2820 0003 3056 4265 and return receipt.


David Douglas

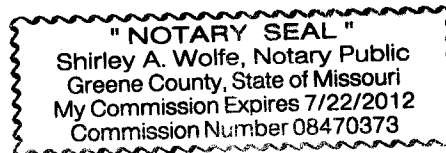
2300 E. Hartley Road
Ozark MO 65721


Suzanne Douglas

The Person above, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document and acknowledged to me that he/she executed the same in his authorized capacity and that by his signature on this instrument who is the person who executed this instrument.

I certify under PENALTY OF PERJURY under the laws of this State that the foregoing paragraph is true and correct.

Witness my hand and official seal.





NOTARY PUBLIC IN AND FOR
THE STATE OF MISSOURI

Notary Seal